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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA, for  
12 the Use and Benefit of Collins  
13 Plumbing, Inc., a California  
INC.,

14 Plaintiffs,

15 v.

16 TURNER-PENICK JOINT VENTURE  
et al.,

17 Defendants.  
18

19 AND RELATED COUNTER-  
20 CLAIMS AND THIRD-PARTY  
CLAIMS  
21

Civil No. 3:11-cv-2834-GPC-MDD

**ORDER GRANTING JOINT  
MOTIONS FOR  
DETERMINATION OF GOOD  
FAITH SETTLEMENT**

**(ECF NOS. 158, 167)**

22 **INTRODUCTION**

23 Turner-Penick Joint Venture (“Turner-Penick”) and non-party MVEI-VMA Joint  
24 Venture (“MVEI”) have filed a joint motion for determination of good faith settlement.  
25 (ECF No. 158.) Turner-Penick and Collins Plumbing, Inc. (“Collins”) have also filed  
26 a joint motion for determination of good faith settlement. (ECF No. 167.) To date, the  
27 Court has received no opposition to these joint motions by the other parties to this case  
28 (“Nonsettling Parties”). Having considered the parties’ joint motions and the

1 applicable law, the Court will **GRANT** both joint motions.

2 **BACKGROUND**

3 In 2008, the Naval Facilities Engineering Command (“NAVFAC”) solicited bids  
4 for the construction of two Bachelor Enlisted Quarters (“BEQs”) for the U.S. Marine  
5 Corps at Camp Pendleton, California known as Package 4 (“BEQ 4”) and Package 7  
6 (“BEQ 7”) (collectively, the “Project”). Turner-Penick was the general design-builder  
7 on the Project and therefore subcontracted directly with all members of the  
8 design-build team, including Collins, California Comfort Systems USA, Inc. (“Comfort  
9 Systems”), Walsh Engineers, Inc. (“Walsh”), and MVEI (a joint venture of two  
10 architectural firms). Turner-Penick contends it allocated responsibility for coordinating  
11 the design of the Project to MVEI, while MVEI contends Turner-Penick maintained  
12 ultimate control over, and responsibility for, the design. The Project is now complete,  
13 and all buildings are occupied.

14 The main issue in this case involves the design and installation of certain  
15 mechanical systems in the BEQ 4 attics. Comfort Systems initially designed an HVAC  
16 system that used exterior wall louvers for ventilation rather than a central-air system.  
17 Comfort Systems contends Turner-Penick authorized this particular design, while  
18 Turner-Penick contends Comfort Systems provided assurance that the system complied  
19 with Project requirements and would be accepted by NAVFAC. NAVFAC rejected the  
20 exterior-wall-louver system and required a central-air system to be installed in the BEQ  
21 4 attics.

22 During the modification, NAVFAC inspected the attics and asserted the spacing  
23 was inadequate. The issue of attic spacing had been discussed, vetted, and ultimately  
24 approved by the design team. Turner-Penick contends the design team should have  
25 understood and followed Project requirements, while Collins and the other  
26 subcontractors contend Turner-Penick controlled and approved the original design and  
27 then unilaterally opted to pursue a complete redesign of the attic space in response to  
28 NAVFAC’s inspection.

1 On December 5, 2011, Collins filed an action for breach of contract against  
2 Turner-Penick and for recovery under the Miller Act against defendants Safeco  
3 Insurance Company of America, Liberty Mutual Insurance Company, Zurich American  
4 Insurance Company, Fidelity and Deposit Company of Maryland, and Federal  
5 Insurance Company (collectively, "Sureties"). Collins alleges it is owed \$1,446,996  
6 for unpaid work on the Project, including \$754,425 in plumbing re-work in the attics  
7 and \$692,571 in contract balance and change orders, fees, costs, and interest. Collins  
8 alleges the Sureties are jointly and severally obligated to pay Collins. Collins also  
9 maintains a third-party claim against Comfort Systems.

10 Turnick-Penick asserts counterclaims and third-party claims against Collins,  
11 Comfort Systems, MVEI, and Walsh for breach of express and implied contract,  
12 negligence, express and implied indemnity, equitable indemnity, contribution, and  
13 declaratory relief. The total amount of damages claimed by Turnick-Penick includes  
14 approximately \$2,756,000 in repair damages and approximately \$1,026,000 in delay  
15 damages. In addition, Turner-Penick faces counterclaims by Comfort Systems and  
16 potential claims by MVEI for repair and redesign costs collectively totaling  
17 \$2,684,000.

18 In 2003, the parties attended a mediation with mediator George Calkins but did  
19 not resolve the matter. In March 2014, the parties attended another mediation with  
20 mediator Kenneth Gibbs. The parties did not reach a settlement at that time but  
21 continued settlement discussions with the Gibbs.

22 At the end of March 2014, Turner-Penick and MVEI reached a settlement  
23 agreement, whereby MVEI would pay Turner-Penick \$750,000 in exchange for a full  
24 release of Turner-Penick's claims against MVEI, and Turnick-Penick would pay MVEI  
25 \$50,000 in exchange for a full release of MVEI's claims against Turner-Penick. (ECF  
26 No. 158.)

27 Thereafter, at the beginning of May 2014, Turner-Penick and Collins reached a  
28 settlement agreement, whereby Turner-Penick would pay Collins \$820,000 in exchange

1 for a release of Collins' claims against Turner-Penick, and Collins would pay  
 2 Turner-Penick \$100,000 in exchange for a release of Turner-Penick's claims against  
 3 Collins. (ECF No. 167.) Both settlements are currently before the Court for a  
 4 determination of whether they were reached in good faith.

### 5 LEGAL STANDARD

6 Under California law, "[w]here a release . . . is given in good faith before . . .  
 7 judgment to one or more of a number of tortfeasors claimed to be liable for the same  
 8 tort, or to one or more other co-obligors mutually subject to contribution rights," the  
 9 release shall, among other things, "discharge the party to whom it is given from all  
 10 liability for any contribution to any other parties." Cal. Code Civ. P. § 877.

11 To obtain a determination that it reached a settlement in good faith, "a settling  
 12 party may give notice of settlement to all parties and to the court, together with an  
 13 application for determination of good faith settlement." Cal. Code Civ. P. §  
 14 877.6(a)(2). Nonsettling parties are thereafter given an opportunity to contest the  
 15 settlement. Id.

16 If, after reviewing the application for determination of good faith settlement and  
 17 any response(s) thereto, the court determines the settlement was entered in good faith,  
 18 "any other joint tortfeasor or co-obligor" is barred "from any further claims against the  
 19 settling tortfeasor or co-obligor for equitable comparative contribution, or partial or  
 20 comparative indemnity, based on comparative negligence or comparative fault." Id.  
 21 § 877.6(c); Tech-Bilt, Inc. v. Woodward-Clyde & Associates, 38 Cal. 3d 488, 494  
 22 (1985); Commercial Union Ins. Co. v. Ford Motor Co., 640 F.2d 210, 212 (9th Cir.  
 23 1981).

24 The party asserting a lack of good faith has the burden of proof on that issue.  
 25 Cal. Code Civ. P. § 877.6(d).

26 To meet the standard of "good faith," the amount of the settlement must be  
 27 "within the reasonable range of the settling tortfeasor's proportional share of  
 28 comparative liability for the plaintiff's injuries." Tech-Bilt, 38 Cal. 3d at 499; see also

1 Torres v. Union Pac. R. Co., 157 Cal. App.3d 499 (1984) (holding that “a  
2 co-defendant’s settlement price cannot be grossly disproportionate to his fair share of  
3 the damages”).

4 In applying the reasonable-range test, courts may consider the following factors:  
5 (1) “a rough approximation of the plaintiffs’ total recovery and a settlor’s proportionate  
6 liability”; (2) “the amount paid in settlement”; (3) “a recognition that a settlor should  
7 pay less in settlement than if found liable after a trial”; (4) “the allocation of settlement  
8 proceeds among plaintiffs”; (5) “the financial conditions and insurance policy limits  
9 of settling defendants”; and (6) evidence of “collusion, fraud, or tortious conduct aimed  
10 to injure the interests of nonsettling defendants.” Tech-Bilt, 38 Cal. 3d at 499. A  
11 settlement will be deemed to have been reached in good faith, so long as it is not so far  
12 “out of the ballpark” in relation to the foregoing factors “as to be inconsistent with the  
13 equitable objectives of the statute.” Id. at 499-500.

14 A court must only weigh the Tech-Bilt factors when the good-faith nature of a  
15 settlement is disputed. Marine Grp., LLC v. Marine Travelift, Inc., 2013 WL 416407,  
16 at \*4 (S.D. Cal. Jan. 30, 2013) (citing City of Grand Terrace v. Super. Ct., 192 Cal.  
17 App. 2d 1251, 1261 (1987)). In the absence of a dispute, a “barebones motion which  
18 sets forth the ground of good faith, accompanied by a declaration which sets forth a  
19 brief background of the case is sufficient.” Id.

## 20 DISCUSSION

21 Here, because the Nonsettling Parties have not objected to either of the instant  
22 joint motions for determination of good faith settlement, the Court need not apply the  
23 Tech-Bilt factors. Having reviewed the joint motions, the Court will grant the joint  
24 motions as unopposed.

## 25 CONCLUSION & ORDER

26 For the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 27 1. Turner-Penick and MVEI’s Joint Motion for Determination of Good Faith  
28 Settlement, (ECF No. 158) is **GRANTED**; and

1           2.     Turner-Penick and Collins' Joint Motion for Determination of Good Faith  
2                 Settlement, (ECF No. 167), is **GRANTED**.

3     DATED: July 23, 2014

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5                                 HON. GONZALO P. CURIEL  
6                                 United States District Judge  
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